IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17179 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOLI (THAKORE) BAJUJI LAXMANJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17179 of 2004

MR AMIT C NANAVATI for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/02/2005

ORAL JUDGEMENT

#. Rule. Mr.Sood, learned AGP, waives service of rule

on behalf of the respondent.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 19.6.2004 / 21.8.2004 in Revision Application No.3 of 1999 in dismissing the same and confirming the order passed by the Deputy Collector, Palanpur dated 30.10.1995 as well as the order passed by the Collector, Banaskantha dated 25.8.1998 by which in RTS proceedings in exercise of the powers under the provisions of the Bombay Land Revenue Code ("the Code" for short), the authority has passed the order to dispossess the petitioner.

#. Being aggrieved and dissatisfied with the entry Nos.234 and 411 in respect of the land bearing Survey No.611 situated at village Dhandha, Palanpur, the petitioner preferred the appeal before the Deputy Collector, Palanpur, being RTS Appeal No.88 of 1993 under Rule 108(5) of Bombay Land Revenue Rules ("the Rules" for short). The Deputy Collector, Palanpur not only dismissed the said appeal, but also passed the order to dispossess the petitioner. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector dated 30.10.1994 in RTS Appeal No.88 of 1993, the petitioner preferred the revision application No.19 of 1996 before the Collector, Banaskantha. The Collector, Banaskantha by his order dated 25.8.1998 dismissed the said revision application, however, passed the order to take the steps and ordered to initiate the proceedings for dispossessing the petitioner. Being aggrieved and dissatisfied with the same, the petitioner preferred the revision application before the Secretary (Appeals), which was numbered as Revision Application No.3 of 1999. The revisional authority, i.e. Secretary (Appeals) by his order dated 19.6.2004 / 21.8.2004 dismissed the said revision application confirming the orders passed by both the authorities below.

#. Mr.Amit Nanavati, learned advocate appearing for the petitioner, has vehemently submitted that while exercise the powers under the provisions of the Code and the Rules in RTS proceedings and in the proceedings in which the revenue entries were challenged, the Deputy Collector could not have passed the order to dispossess the petitioner. It is submitted that at the most, the Deputy

Collector could have dismissed the revision application confirming the entries which were challenged before him. It is, therefore, submitted that the Collector as well as the Secretary (Appeals) have also materially erred in confirming the said order.

#. In response to the notice issued by this Court, Mr.Sood, learned AGP, appears for the respondent. It is submitted that, in view of the fact that the petitioner is in unauthorised occupation of the land in question, the authorities are justifying in passing the orders in directing to dispossess the petitioner. It is further submitted that, in fact, the Collector, Banaskantha in his order dated 25.8.1998 has already clarified that the Deputy Collector to initiate the appropriate proceedings to get the possession and to remove the petitioner from unauthorised occupation in accordance with law. Therefore, it is submitted that no further clarification is required.

#. Heard the learned advocates for the parties.

#. The Deputy Collector was exercising the powers under Rule 108 of the Rules in RTS proceedings. What was challenged before the Deputy Collector was revenue entries. At the most, the Deputy Collector could have confirmed the said entries, but in the said proceedings under Rule 108 of the Rules, the Deputy Collector could not have passed the order to dispossess the petitioner straightaway. However, the Collector, Banaskantha has already clarified this position in his order dated 25.8.1998 and has directed the Deputy Collector to initiate the proceedings in accordance with law and that the order is confirmed by the Secretary (Appeals). When the Collector, Banaskantha has already clarified in the order and the same is confirmed, it cannot be said that the Secretary (Appeals) confirmed the order of the Deputy Collector dated 30.10.1995 by which the Deputy Collector has passed the order straightaway to dispossess the petitioner. As stated above, the Collector, Banaskantha has already clarified the position and has directed the Deputy Collector to initiate the proceedings to remove unauthorised occupation of the petitioner in accordance with law. It will be open for the Deputy Collector to initiate the proceedings to remove unauthorised occupation of the petitioner in accordance with law.

#. With these observations and directions, the present special civil application is disposed of. Rule is discharged. No costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)